

Appeal from a decision of the Director, Minerals Management Service, affirming partial denial of requests for refund of rentals paid for a period of suspension of operations on 11 Federal offshore oil and gas leases. MMS-87-0262-OCS.

Vacated and remanded.

1. Oil and Gas Leases: Rentals -- Oil and Gas Leases: Suspensions --
Outer Continental Shelf Lands Act: Oil and Gas Leases

It was error to apply sec. 10(a) of the Outer Continental Shelf Lands Act, 43 U.S.C. § 1339(a) (1988), to diminish the amount of rental refund for rentals paid for periods of lease suspension. In accordance with 30 CFR 218.154(c) (1987), MMS must credit advance rentals paid for the period of time operations were suspended against rental accruing after termination of the suspension.

APPEARANCES: David A. Waskowiak, Esq., New Orleans, Louisiana, for Shell Offshore, Inc.; Peter J. Schaumberg, Esq., and Douglas O. Bowman, Esq., Office of the Solicitor, U.S. Department of the Interior, Washington, D.C., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE ARNESS

Shell Offshore, Inc. (Shell Offshore), appeals from a May 26, 1988, decision of the Director, Minerals Management Service (MMS), affirming a decision by the Solid Minerals Section Chief of the Denver, Colorado, Office, Royalty Management Program, MMS, to deny in part a rental refund request from Shell Offshore. MMS reasoned that rentals paid more than 2 years before the request for repayment was received were barred by section 10(a) of the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. § 1339(a) (1988).

On April 9, 1984, MMS notified Shell Offshore of a Suspension of Operations (SOO), in accordance with 30 CFR 250.12(a)(i)(iv)(1984), for the purpose of environmental studies on the following 11 Outer Continental Shelf

(OCS) leases of the Pulley Ridge Area in which Shell Offshore had an interest: OCS-G 6514 (Pulley Ridge Block 733), OCS-G 6515 (Pulley Ridge Block 739), OCS-G 6522 (Pulley Ridge Block 830), OCS-G 6523 (Pulley Ridge Block 831), OCS-G 6526 (Pulley Ridge Block 874), OCS-G 6527 (Pulley Ridge Block 875), OCS-G 6532 (Pulley Ridge Block 963), OCS-G 6533 (Pulley Ridge Block 964), OCS-G 6539 (Pulley Ridge Block 1000), OCS-G 6541 (Pulley Ridge Block 1007), OCS-G 6542 (Pulley Ridge Block 1008). The notice stated: "The term of the leases will be extended pursuant to 30 CFR 250.12(c)(1) [(1984)] for a period of time equivalent to the period of the suspension. This suspension does not affect your annual rental responsibilities for your lease."

By notices dated December 27, 1985, and March 28, 1986, the SOO was extended twice, ultimately ending on February 28, 1987, for a total of 1,055 days under the suspension. Both notices indicated that Shell Offshore was required to continue paying rent. During the period of suspension, Shell Offshore continued to submit annual rental payments for each of the subject leases. On August 12, 1986, Shell Offshore requested refunds of \$48,535.08 per lease, alleging that amendments in May 1986 to the regulations at 30 CFR 218.154 (1987), which provided that rental was not required during periods of suspension to conduct environmental studies, made that regulation applicable to the subject leases. 1/ MMS denied the refund requests on September 26, 1986, concluding that the cited regulation could not be applied retroactively to afford a legal basis for the requests. Shell Offshore appealed to the Director, MMS, who held in a January 30, 1987, decision that it was the policy of the Department to suspend rental payments during periods of suspension long before the technical corrections to the regulation in question and, therefore, the regulations should be given effect under these circumstances. 2/ By notice dated April 20, 1987, the Gulf of Mexico OCS Regional Supervisor, MMS, informed Shell Offshore that, in accordance with the Director's decision, requests for refunds of rental paid for the period covered by the SOO would be accepted.

1/ The regulations governing appellant's obligation to pay rental read in relevant part:

"If under the provisions of 30 CFR 250.12(a)(1)(ii), (iii) or (iv), the Director, with respect to any lease, directs the suspension of both operations and production, or, with respect to a lease on which there is no producible well, directs the suspension of operations, no payment of rental or minimum royalty shall be required for or during the period of suspension." 30 CFR 218.154(a) (1987). The regulation at 30 CFR 250.12(a)(1)(ii) (1987) provided that the Director could suspend operations to facilitate environmental studies. The regulation has been recodified and now appears at 30 CFR 250.10(b)(4), 53 FR 10690 (Apr. 1, 1988).

2/ The Director's analysis may be summarized as follows. The predecessor to the regulation at issue first appeared as 43 CFR 3317.4(a) (1979), 44 FR 38283 (June 29, 1979). The regulation cross-referenced 30 CFR 250.12(d)(4) (1979) to establish that rental payments were not required during suspension of lease operations for environmental studies. When all the activities

On April 27, 1987, the Section Chief, Solid Minerals Branch, Royalty Management Program, Denver Office, MMS, relying on section 10(a) of OCSLA, denied in part the refund requests for rentals paid. The Section Chief determined that, while Shell Offshore was entitled to a refund of \$34,560 per lease, it was not entitled to the amount of \$13,975.08 (\$153,725.88 in total for all 11 leases) because that amount was part of the rental payments received on January 24, 1984, more than 2 years prior to the August 18, 1986, filing of the refund requests.

Shell Offshore appealed to the Director, MMS, on May 27, 1987, arguing that the partial denial of its refund request incorrectly applied section 10(a). Shell Offshore argued that this partial denial was barred because the Director's earlier decision decided finally all issues relating to the refund request. Further, it argued that MMS, by not asserting it earlier, had waived the right to raise section 10(a) as a defense and that MMS is estopped from claiming a limitation on payments refunds because it improperly informed the lessee that the SOO would not affect such rental obligations. Shell Offshore also argued that section 10(a) only bars repayment as a remedy to overpayment and does not preclude other remedies such as recoupment or setoff.

On May 26, 1988, the Director, MMS, affirmed the partial denial of the refund request. The Director held that the bar to repayment after 2 years is statutory and cannot be waived by the Department. The Director further concluded that the statute does not support other relief such as setoffs or recoupment for those who are barred from obtaining refunds.

[1] In relevant part, section 10(a) of OCSLA, 30 U.S.C. § 1339(a) (1988), provides:

[W]hen it appears to the satisfaction of the Secretary that any person has made a payment to the United States in connection with any lease under this subchapter in excess of the amount he was lawfully required to pay, such excess shall be repaid without interest to such person or his legal representative, if a request for repayment of such excess is filed with the Secretary within two years after making of the payment * * *.

relating to OCS were consolidated within MMS, the regulation was redesignated as 30 CFR 256.56(a), 47 FR 47006 (Oct. 22, 1982). This regulation was soon thereafter redesignated as 30 CFR 218.154(a), 48 FR 35641 (Aug. 5, 1983). Meanwhile, the language formerly in 30 CFR 250.12(d)(4) (1979) was relocated at 30 CFR 250.12(a)(1)(iv), 44 FR 61896 (Oct. 16, 1979). As a result, the cross-reference in 30 CFR 218.154(a) was no longer correct. The rulemaking at issue, 51 FR 19062 (May 27, 1986), was merely a technical correction of an erroneous cross-reference and did not involve substantive changes to the governing policies of the Department.

This provision confers authority upon the Secretary of the Interior to approve refunds for overpayment arising from OCS leases and also authorizes the Secretary of the Treasury to make the payments. However, such authority is premised upon a request for refund within two years of the date payment is received by the appropriate office. See Shell Offshore, 96 IBLA 149, 94 I.D. 69 (1987), rev'd sub nom. Chevron U.S.A., Inc. v. United States, No. 350-87L (Cl. Ct. Dec. 5, 1989), appeal filed (Fed. Cir. Jan. 31, 1990).

For purposes of resolving this appeal, we need not consider appellant's arguments reasserted on appeal to this Board that the Department is estopped from applying section 10(a) to the present situation. The reason is that we do not find that statute to be controlling in this particular situation because there should have been no necessity for Shell Offshore to file a request for refund in this case. The Director, MMS, determined that rental was not due during the period of suspension. Section 10(a) does not operate to extinguish a lessee's claim to moneys overpaid, but merely establishes authority for repayment of funds deposited in the Treasury upon the timely filing of a refund request. See Shell Offshore, 96 IBLA at 165-67, 94 I.D. at 78-79. The instant appeal should have been resolved under 30 CFR 218.154(c) (1987), which provides:

(c) If the lease anniversary date falls within a period of suspension for which no rental or minimum royalty payments are required under paragraph (a) of this section, the prorated rentals or minimum royalties are due and payable as of the date the suspension period terminates. These amounts shall be computed and notice thereof given the lessee.

The Board applied this regulation in Union Oil Co. of California, 116 IBLA 67 (1990), another case involving a rental refund request which was denied by MMS on the basis of section 10(a) of OCSLA. The rationale set forth in that case is controlling herein. 3/

In computing the prorated rental, MMS may credit advance rentals received during the period of time operations were suspended against future rentals. Unlike royalty payments, where the obligation to pay does not arise until "the end of the month following the month during which the oil and gas is produced and sold" (30 CFR 218.50(a) (1987)), rental is paid in advance. Because there is no statutory or regulatory bar to prepayment of annual rentals, any rental paid but not earned should be credited against future advance rentals. See Union Oil Co. of California, 116 IBLA at 72 n.5. The record before us does not indicate that MMS computed the amount of advance rental due or notified the lessee of such computation at the

3/ In Union, MMS correctly informed the lessee that rental was not required during the period of suspension. However, upon lifting the suspension, MMS made no adjustment for the rental which had been paid in advance for the period of the suspension, and denied Union's request for a refund of that amount.

end of the suspension period. Under the circumstances of this case, the payment of rental during the period of the SOO should be reviewed and adjustment made for rentals paid and not returned or credited.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is vacated and the case remanded for action consistent with this opinion.

Franklin D. Arness
Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge